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8 **IN THE UNITED STATES DISTRICT COURT FOR THE**  
9 **EASTERN DISTRICT OF CALIFORNIA**  
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12 **GARY ALLEN GOLDSMITH,**

13 **Petitioner,**

14 **v.**

15 **A.K. SCRIBNER,**

16 **Respondent.**  
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) **CV F 05-0444 LJO WMW HC**

) **ORDER TO DENY**  
) **CERTIFICATE OF**  
) **APPEALABILITY**

Petitioner, a state prisoner, filed a petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254. This Court issued a March 22, 2005 order to dismiss petitioner's petition for writ of habeas corpus.

On April 13, 2007, petitioner filed a notice of appeal and an application for certificate of appealability. The controlling statute, 28 U.S.C. § 2253, provides:

(a) In a habeas corpus proceeding or a proceeding under section 2255 before a district judge, the final order shall be subject to review, on appeal, by the court of appeals for the circuit in which the proceeding is held.

(b) There shall be no right of appeal from a final order in a proceeding to test the validity of a warrant to remove to another district or place for commitment or

1 trial a person charged with a criminal offense against the United States, or to test  
2 the validity of such person's detention pending removal proceedings.

3 (c)(1) Unless a circuit justice or judge issues a certificate of appealability, an  
4 appeal may not be taken to the court of appeals from--

5 (A) the final order in a habeas corpus proceeding in which the detention  
6 complained of arises out of process issued by a State court; or

7 (B) the final order in a proceeding under section 2255.

8 (2) A certificate of appealability may issue under paragraph (1) only if the  
9 applicant has made a substantial showing of the denial of a constitutional right.

10 (3) The certificate of appealability under paragraph (1) shall indicate which  
11 specific issue or issues satisfy the showing required by paragraph (2).

12 In this case, the Court finds that Petitioner has failed to carry his burden of making a  
13 substantial showing of the denial of a constitutional right. Accordingly, this Court DENIES  
14 Petitioner's request for a certificate of appealability.

15 IT IS SO ORDERED.

16 **Dated: May 24, 2007**

17 **/s/ Lawrence J. O'Neill**  
18 **UNITED STATES DISTRICT JUDGE**